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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/378,196	08/19/1999	SHMUEL SHAFFER	99P7442US01	8833

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

NGUYEN, BRIAN D

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 09/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/378,196

Applicant(s)

SHAFFER ET AL.

Examiner

Brian D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on the amendment filed 5/9/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy (6,081,513) in view of Riddle (6,175,856).

Regarding claim 1, Roy discloses a telecommunications system comprising a packet switched network; one or more telephony devices coupled to the packet switched network (see Figure 1); a bandwidth allocation server (see col. 3, lines 45-58 and col. 5, lines 23-26) configured to cause a renegotiation of bandwidth requirement between the telephony devices (see col. 2, lines 42-45; col. 7, lines 11-19; col. 13, lines 56-61; and col. 19, lines 19-21). Roy does not specifically disclose the one or more telephony devices communicate using one or more coding algorithms and the renegotiation is of which of the coding algorithms the one or more telephony devices communicates while the one or more telephony devices are communicating using a predetermined coding algorithm. However, Riddle from the same or similar field of Roy discloses a telecommunications system in which one or more telephony devices (see Figure 1) communicates using one or more coding algorithms and renegotiating of which of the coding algorithms the one or more telephony devices communicates while the one or more telephony devices are communicating using a predetermined coding algorithm (see col. 1, lines 48-63; col. 9, lines 6-9; col. 10, lines 57-58; and col. 11, lines 11-12). Therefore, it would have been obvious

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to a person of ordinary skill in the art at the time the invention was made to use one or more coding algorithms and renegotiating the coding algorithms as network condition changes as taught by Riddle in the system of Roy so that different telephony devices of different types can communicate with each others.

Regarding claim 2, Roy further discloses the packet switched network is a H.323 network (see col. 2, lines 42-45).

Regarding claim 3, Roy further discloses the bandwidth allocation server configured to initiate the renegotiation if one or more existing connections have a QoS level which may be altered (see col. 5, lines 24-27; col. 9, lines 3-7; and col. 19, lines 4-5).

Regarding claim 4, Roy further discloses the bandwidth allocation server configured to initiate the renegotiation if a level of data traffic exceeds a predetermined threshold (see 269 of Figure 14 and col. 13, lines 62-65).

Regarding claims 5 and 6, Roy discloses a method for operating a telecommunication system comprising monitoring network usage at a bandwidth allocation server (7) and changing bandwidth allocated to one or more ongoing connections based on the monitoring network usage, responsive to signals from the bandwidth allocation server as in claim 5 (see col. 3, lines 23-26 and col. 14, lines 48-50) and determining whether an existing connection has a lower quality of service than another connection and changing bandwidth allocated to the existing connection responsive to the determining as in claim 6 (see abstract; col. 6, lines 60-62; and col. 15, lines 46-48). Roy does not specifically disclose changing codec speed for the existing connection. However, Riddle from the same or similar field of Roy discloses a method for operating a telecommunications system in which codec speed for an existing connection could be changed

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(see col. 1, lines 52-55 and col. 10, line 57-col. 11, line 12). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to change codec speed for one or more ongoing connections as taught by Riddle in the system of Roy in order to effectively and fairly use of the system bandwidth between the connections.

Regarding claim 7, Roy further discloses determining whether data traffic on the network has exceeded a predetermined threshold (see col. 3, lines 23-26 and col. 13, lines 62-65).

3. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddle (6,175,856) in view of Roy (6,081,513).

Regarding claims 8-11, Riddle discloses telecommunications device comprising: means for establishing a connection with another telecommunications device using a first coding algorithm (see Figure 6 and col. 6, lines 20-21) and means for changing the communication from the first coding algorithm to a second coding algorithm (see col. 1, lines 48-55 and col. 13, lines 63-65), means for directing the another telecommunications device to renegotiate coding algorithm from the first to the second coding algorithm (see col. 1, lines 52-55; col. 9, lines 6-9; col. 10, lines 57-58; and col. 11, lines 11-12). Riddle does not disclose a bandwidth allocation server that monitors network condition and except means for monitoring network usage for levels of data traffic. However, Roy teaches a bandwidth allocation server (7) and means for monitoring network usage for levels of data traffic (see figure 1; col. 3, lines 23-26 and col. 7, lines 36-41). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to monitor network usage for levels of data traffic as taught by Roy in the system of Riddle so that bandwidth allocated to the connections can be dynamically adjusted based on level of data traffic in order to effectively use of the system bandwidth.

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Regarding claims 12 and 13, Riddle discloses all the claimed subject matter including changing from the first coding algorithm to the second coding algorithm as described in previous paragraphs, except for monitoring network usage for actual and requested quality of service (QoS) levels and determining if the connection has a lower QoS than another connection so that the codec algorithms can be changed based on the determining. However, Roy from the same or similar field of Riddle discloses monitoring network usage for actual and requested quality of service (QoS) levels as in claim 12 (see abstract; col. 3, lines 23-26; col. 7, lines 25-41) and determining if the connection has a lower QoS than another connection as in claim 13 (see col. 9, lines 3-7 and col. 14, lines 40-50). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to monitor network usage as taught by Roy in the system of Riddle so that a higher priority will be guaranteed and have a better service than a lower priority.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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12. Claims 5, 7, 8, 10, and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15 and 19 of copending Application No. 09/238,671. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations: “monitoring network usage” as described in claims 5, 10 and 11 is corresponding to “a bandwidth monitor configured to monitor network bandwidth usage” as described in claim 15 of copending Application No. 09/236,671; “changing codec speed for one or more ongoing connections based on the monitoring network usage” as described in claim 5 is corresponding to “select which of said coding algorithms said one or more telephony devices communicates with based on network bandwidth usage” and “adjust said coding algorithm” as described in claims 15 and 19, respectively, of copending Application No. 09/236,671; “determining whether data traffic on said network has exceeded a predetermined threshold” as described in claim 7 is corresponding to “if system bandwidth exceeds a predetermined threshold as described in claim 19 of copending Application No. 09/236,671; “means for establishing a connection with another telecommunications device using a first coding algorithm” as described in claim 8 is corresponding to “a network interface for interfacing said bandwidth allocation server to a packet switched network” and “said one or more telephony devices configured to communicate using one or more coding algorithms” as described in claim 15 of copending Application No. 09/236,671; and “means for changing said communication from said first coding algorithm to a second coding algorithm” as described in claim 8 is corresponding to “adjusting said coding algorithms” as described in claim 19 of copending Application No. 09/238,671.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

5. Applicant's arguments filed 5/9/03 have been fully considered but they are not persuasive.

The applicant argues that Riddle appears to merely provide a way for parties starting or joining a conference to negotiate codec choices and does not appear to have anything to do with a bandwidth allocation server responsible on a network-wide level for directing client terminals to renegotiate codec choices. The applicant also argues that Roy is relied on for allegedly teaching a bandwidth allocation server, however, provides a bridge resource manager that is used to establish coding based on QoS considerations when a conference is begun and Roy does not appear to provide a server that causes a change in codec speed or renegotiating codecs once initial codec choices have been made. The Examiner disagrees because Riddle does teach codec renegotiation when there is a change in network usage, for example, when new member is added or existing member is deleted (see 502, 506, 508, 510 of figure 5; col. 1, lines 48-54; col. 3, lines 24-34). Roy does provide a bandwidth allocation server (resource manager 7) that causes a change in codec speed or negotiating codecs once initial codec choices have been made (preempting the lower priority resources if sufficient resources are not available) (see lines 12-15 of the abstract; col. 6, lines 60-62; col. 7, lines 16-18; col. 19, lines 17-21). Therefore, the combination of Roy and Riddle is sufficient to render claims 1-3 obvious under 35 USC 103.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (703) 305-5133. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Olms can be reached on (703) 305-4703. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

BN



**KENNETH VANDERPUYE
PRIMARY EXAMINER**